



Private Security Industry Regulatory
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INDUSTRY CIRCULAR

To : ALL SECURITY SERVICE PROVIDERS

From : MANABELA CHAUKE
DIRECTOR

Date : 17 OCTOBER 2014

Subject : INDEPENDENT CONTRACTOR OR "SELF EMPLOYED SECURITY OFFICERS" – LABOUR COURT JUDGMENT

Acting Judge A.J. Snyman of the Labour Court gave a scathing judgment on the use of so called independent contractors or "self-employed security officers" in the guarding sector as defined in Sectoral Determination 6.

This judgement (Case No: J2126/2014) specifically refers to the independent contractor or self employed security officer system introduced to the private security industry by FMW Admin Services CC (the applicant's in this Labour Court matter) in an attempt to circumvent minimum conditions of employment legislation for their clients in the guarding sector. In dealing with the independent contracting model designed by FMW Admin Services CC, acting Judge Snyman stated, *inter alia*, the following:

- [53] *...."I have little hesitation in concluding that the applicant's business model in this regard is unlawful and not worthy to protect or even be allowed to perpetuate. The applicant is perpetrating a sham to avoid compliance with the provisions of the LRA and the BCEA and is clearly exploiting vulnerable individual security guards desperate for work in an economy where work is scarce".*
- [55] *"There is no doubt that the applicant's purported tender document and consequent independent contract ticks all the employment boxes in terms of the Sectoral Determination. It is clear that all these self-employed security officers do nothing else but fulfil the functions and duties of grade A to E security officers. In addition, virtually all the presumptions in clause 18(2) find application. It is clear that the purported self-employed security officers forming the basis of the applicants' trade connections are not self-employed at all, but should actually be employees of either the applicant or its client".*
- [58] *"But worst of all, in my view, is the use by the applicant of a business model that is nothing more than a shameless attempt to circumvent minimum employment protection for what is really employees".*

Council Members: Mr Thula Bopela (Chairman), Mr. Joy Rathebe (Deputy Chairperson),

Mr. Benjamin Ntuli – (Council Member), Brigadier Cynthia Phillison – (Council Member), Ms Ntokozo Mkhembu – (Council Member)

"...The applicant's contract is nothing but a sham to seek to extract it and its clients from the employment relationship and the benefits and protection then bestowed on employees in terms of employment legislation".

- [59] *"But matters do not even end there. In the undertaking required to be signed, it is glibly recorded that the self-employed security officer exercises his or right in terms of section 22 of the Constitution, implying that this contract is the exercise of a fundamental right that must be respected. I cannot disagree more, and am of the view that exactly the opposite is true"*

"...It is contrary to constitutional values and seeks to exploit vulnerable individual persons in a society where there is a shortage of available employment. It is contrary, in any event, to the right to fair labour practices in the Bill of Rights. It seeks to undermine what is in essence fairness and equality in the workplace".

- [60] *"If simple justice is done in respect of what the applicant seeks to do in casu with its independent contracting model, and now also seeks protect in this application, such contracts simply cannot be sustained. The enforcement of this contract regime would be unjust and unfair, and severely undermines the right to security of employment of those persons the applicant seeks to contract with, and whom are in reality nothing more than security guard employees".*

- [62] *"I thus conclude that the applicant's independent contracting model which on its own version is the cornerstone of its protectable interest where it comes to trade connections is unlawful and at odds with the constitutional values of fair labour practices and just and fair play. It seeks to avoid the protections afforded by employment legislation such as the LRA and BCEA. It directly undermines security of employment, and in any event flies directly in the face of the minimum terms and conditions for individual security guards specifically imposed on the private security services sector in Sectoral Determination 6".*

The Authority is aware that FMW Admin Services CC and some of its clients are attempting to convince the Authority and members of industry that their independent contractor or "self-employed security officer" model is legitimate. From the judgement, this is clearly not the case and the Authority will (based on this judgment) take action against security provider who uses this unlawful system.

Interested parties are welcome to obtain a copy of the judgment on our website at www.psira.co.za.

Yours faithfully



MANABELA CHAUKE
DIRECTOR

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